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1951.

File. No. O. charcoal/51

15/51

Legal Department-

G BRANCH

Subject:- Opinions on the Bombay Charcoal and Firewood Trade Licensing Order, 1949

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File No. O./ charcoal /51

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S.I./19.7.56. 5c.

Legal Department.

The fact that delivery was given in Bombay is not conclusive proof that the sale took place in Bombay. However as the delivery was given in Bombay and perhaps the price was also received in Bombay, prosecution may be launched in Bombay on the ground that the sale took place in Bombay. But it would be open to the accused to prove otherwise and to show that the courts in Bombay have no jurisdiction.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G/87, dated the 10th March 1951.

S.I./16.7.56. 4c.

Legal Department.

Clause 13 of the Bombay Charcoal and Firewood Trade licensing Order, 1949, provides that the licensing authority may at any time for reasons to be recorded cancel or suspend any licence issued by it. A retailer is given a licence in Form H appended to the said Order subject to the provisions of the said Order and to the terms and conditions specified in the licence. The power of the licensing authority for suspending any licence is therefore limited and extends so far as the observance of the provisions of the said Order and the terms of the licence is concerned. The licensing authority cannot exercise the power of suspension arbitrarily and in circumstances extraneous to the provisions of the said Order and the terms of the licence. Consequently, the licensing authority cannot legally suspend any licence of a retailer who has not paid his arrears to a wholesaler in respect of charcoal purchased from him on credit, as the licensing authority is not concerned with this question.

The proposal of the Director of Civil Supplies (Fuel) is therefore not legally in order.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-179, dated the 9th May 1951.

S.I.M/16.7.56. 4c.

Office of the R.L.A.

Submitted.

2. Please see the office note of Civil Supplies Department on pages 3-4 ante.

3. The Air India Ltd. in their letter at page 1 have requested the state Coal Controller Bombay that they may be informed whether the action of their suppliers in Bombay in charging them packing and transport charges over and above the controlled rate for supplying charcoal to their canteen at Santa Cruz Airport in the year 1949, was not in contravention of the Control Order under which the price of charcoal was fixed.

4. The question of supply of charcoal to the Air India Ltd. by their supplying agents, M/s. Sharp & sons @ the rate of Rs. 2-8-0 per quarter as against the controlled rate of Rs. 2/2/0 fixed under Government Order, Civil Supplies Department No. 32/IV-B dt. 16-3-49, had already been considered by the R.L.A. under his opinion No. G-41 dt. 15.2.50 wherein it had been held by him that M/s. Sharp & sons had not contravened the above quoted order by charging the Air India Ltd. Annas 6 towards gunny bag price, filling charges and their commission as these charges and their commission as these charges were not included in the controlled rate of Rs. 2-2-0.

5. The Civil Supplies Department has now proposed to inform the Air India Ltd. that their suppliers were legally entitled to recover the above charges. before, however, giving this reply the Civil Supplies Department has forwarded these papers to this office for R.L.A's advice.

R.T.K./14.5.

Addl.-Secy. Id/-/14.5.

D.L./16.7.56.4c.

Legal Department.

The Air India Ltd. may be informed that the controlled price of charcoal fixed by Government ~~xx~~ in 1949 did not include the cost of packing and delivery service.

Id/- .

Additional Secretary to Government.

U.R. to C.S.D., No. G-183, dated the 15th May 1951.

S.I./16.7.56. 4c.

The question for consideration is whether a successful prosecution of M/s. Hillson and Dinshaw Ltd., on the edivence that is evailable is possible in respect of the following offences, namely:-

i) exporting firewood outside India without a valid licence in contrevention of Government of India, Ministry of Commerce Notification No.91 C.W. (1)/45 dated the 3rd November 1945;

ii) being in possession of firewood in excess of 15 Bengal maunds in contravention of clause 22(2)(a) of the Bombay charcoal and Firewood Trade Licensing Order, 1949.

As regards the 1st effence under the Government of India, Ministry of Commerce Notification No.91 C.W. (1)/45 dated the 3rd November 1945, wood and timber, all sorts including plywood and other laminated wood and firewood but excluding agarwood and sandalwood and containers made therefrom, require an export licence. (Please see para (c) of the notification read with item 6 A in Schedule D of the notification). It is not therefore necessary to prove that the wood in this case was 'firewood' only. From the papers however it appears that M/s. Hillson and Dinshaw Ltd. supplied 75 tons of this wood on the order of M/s. James Finlay & Co. for the use of 'SS George K' which was lying in a shed in Alexandra Docks. M/s. Hillson and Dinshaw Ltd., cannot therefore be said to have attempted to export the wood as the word 'export' defined in the Imports and Exports (Control) Act, 1947 means to take out of India. They have merely supplied the wood to the ship for using it as dunnage. Even though the ultimate effect would be thatalong with the ship the dunnage wood would go out of India, M/s.Hillson cannot be said to have ~~tried~~ tried to export the wood. They only supplied the wood to M/s. James Finlay & Co. and presumably were loading the wood

under their instructions. Besides even if it were an attempt to export, there is no such provision for punishing mere attempts in the Imports and Exports (Control) Act, 1947.

As regards the 2nd offence viz. of being in possession of firewood in excess of 15 Bengal maunds in contravention of clause 22 (2) (a) of the Bombay Charcoal and Firewood Trade licensing Order, 1949, the first essential that will have to be proved is that the muddamal wood is 'firewood'. 'Firewood' is defined in clause 2 (x) of the said Order as including sawdust, scrap and waste wood used as fuel. This is only an inclusive definition. So, for an exhaustive definition in the absence of anything in the Order itself, recourse will have to be taken to the ordinary Dictionary meaning. 'Firewood' is defined in the Oxford Dictionary as "wood for burning". In the Black's Law Dictionary it is defined as "wood suitable for fuel, not including standing or felled timber which is suitable and valuable for other purposes". The question whether the wood in question is firewood or not is one of fact. It is clear from Popatlal's evidence that the wood was sold to Shri A.R. Shukla as firewood in the form of logs and not as timber as contended by Shri Shukla. Shri Shukla got it sawed by the Kamdar Mills and sold it to M/s. Hillson Dinshaw Ltd., for dunnage purposes. The Muddamal wood is not timber. 'Timber' is defined in Black's Law Dictionary as follows:-

"Wood felled for building or other such like use. In a legal sense it generally means (in England) Oak, ash, and elm, but in some parts of England, and generally in America, it is used in a wider sense, which is recognised by the law.

The terms "timber", as used in commerce, refers generally only to large sticks of wood, squared or capable of being squared for building houses or vessels; and certain trees only having been formerly

used.....

used for such purposes, namely, the oak, the ash, and the elm, they alone were recognised as timber trees. But the numerous uses to which wood has come to be applied, and the general employment of all kinds of trees for some valuable purpose, has wrought a change in the general acception of terms in connection therewith, and we find that Webster defines "timber" to be "that sort of wood which is proper for buildings or for tools, utensiles, furniture, carriages, fences, ships, and the like." This would include all sorts of wood from which any useful ~~ix~~ articles may be made, or which may be used to advantage in any class of manufacture or construction."

The muddamal wood is nothing but logs of all sorts of wood used generally as firewood cut into 4 pieces in a saw mill instead of by the axe. The outward surface of these 4 pieces is neither sawed nor smoothed and it is in natural state. Dunnage wood is different from the wood seized in this case. The question that would arise is whether firewood would cease to be firewood only because it is to be used for some other purpose. I do not think only because the ship's agents decided to buy such firewood as dunnage wood it would lose its character as firewood. If this is accepted, then the Company can be said to have committed a breach of clause 22(2) (a) of the Bombay Charcoal and Firewood Trade Licensing Order for being in possession of more than 15 Bengal maunds of firewood. Although they removed the wood from the dealer's place streight to the Docks, the wood can be said to be in their possession or under their control from the time it was purchased by them. As M/s. Hillman Dinshaw purchased the wood for dunnage purposes and not as ~~x~~ fuel, it is for the Civil Supplies Department to consider whether the offence should be treated as technical or not.

Id/-

Additional Secretary to Government

~~...~~ to C.S.D., No. 292, dt. 20th Jul-

Legal Department.

Out of the two contending parties Gafoorbai the widow of a predeceased son of the deceased licensee and Safat Mohamed, the son of the deceased licensee, the latter appears to be the legal heir of the deceased licensee. The parties appear to be sunni Mahomedans. Under the Mahomedab Law the right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor. (para 52 at p.44 of Mulla's Principles of Mahomedab Law - Edn. 13th). The estate of a deceased Mahomedan if he has died intestate, or so much of it as has not been disposed of by will, if he has left a will, devolves on his heirs at the moment of his death and the devolution is not suspended by reason merely of debts being due from the deceased. The heirs succeed to the estate as tenants-in-common in specific shares (para 41 - p.32 ibid). In the present case the business does not appear to be joint family business as discussed in para 57 of Mullas Book as there is nothing in these papers to show that the shop was possessed jointly by the father and sons. Gafoorbai also has not contended anything to that effect. Under the Hanafi Law applicable to Sunnis, Gafoorbai as the daughter-in-law is not a sharer and therefore Safat takes the whole estate as a residuary. In the list of sharers at page 59A. son's daughters are mentioned but they inherit if the deceased leaves no son. In this case therefore safat appears to be the legal heir of the Deceased licensee and there appears to be no objection to issue a licence in his name.

Id/-

Additional-Secretary to Government.

U.R. to C.S.D., No.G-355, dated the 13th August, 1951.

S.A./16.7.56.4c.

Legal Department.

The question for consideration is whether the District Magistrate, South Satara, can fix the prices for the sale of firewood without the application of the Bombay Charcoal and Firewood Trade Licensing Order, 1949 to South Satara, and if so, under what orders.

The answer to the first question is in the affirmative. The powers of the State Government to make orders under clauses (b) to (j) of sub-section (2) of section 4 of the Bombay Essential Commodities and Cattle Control Act, 1946 in respect of all the Commodities and animals specified in Schedules I and II to the Act, have been delegated to the District Magistrates under Government Notification, Civil Supplies Department No.805/Estt. dated the 21st December 1946 issued under section 8 of the said Act. Orders controlling the prices of firewood which is an essential commodity would come under Section 4(2)(f) of the Bombay Essential Commodities and cattle (Control) Act and the District Magistrate, South Satara can issue orders fixing prices for sale of firewood in his district under Section 4 read with the above said delegation notification.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No. G-366, dated the 20th August, 1951.

S.I./16.7.56. 4c.

Legal Department.

Whether the power of attorney was given by Shri Gafoor to Shri Shrikrishna before or after the sale deed was executed by him, is not known. In any case, the power of attorney has no value after the owner has himself sold the shop under a sale-deed. The Story about the existence of an oral agreement to the effect that the owner, Shri Gafoor could rescind the sale deed dated the 2nd January 1951 within a period of 3 months appears to be an afterthought and in law there can be no such sale. It seems, the alleged agreement is set up with a view to defeat the claim of Shri Rampat, who is one of the purchasers. Neither the sale deed nor the partnership deed speak, of the such oral Agreement. Therefore in absence of any existence of any proof in support of the existence of the oral agreement the validity of which is open to doubt the sale deed would stand and the power of attorney and the deed of partnership executed under the power of attorney would have no effect.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-474, dated the 3rd Oct. 1951.

S.I./16.7.56. 4c.

Legal Department.

Under Civil Supplies Department Order No.455/IV-D dated 18-2-1949 the retail rate of split firewood is annas 13 per quarter and under civil Supplies Department Order No.455/IV-D dated 12-11-1949 the retail rate of scrapwood is annas 9 per quarter. As the firewood before the Court was a mixture of split firewood and scrapwood, its price ought to have been more than annas 9 and less than annas 13. But as there is no provision fixing the price of such mixture, the Magistrate was right in acquitting the accused.

If it is the intention that the price of the mixture should be statutorily fixed then it would have to be fixed with relation to the proportion of each variety found in the mixture. Civil Supplies Department may consider this.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No. G-503, dated the 18th October, 1951.

S.I/16.7.56. 4c.

Legal Department.

The questions for R.L.A's consideration are:-

(1) whether the prosecution case against Shri A.R. Shukla may be proceeded with as he was arrested for aiding an abetting the offence of export of firewood without a valid permit and is on bail at present.

(2) whether the firewood pieces which are kept in the Police custody should be allowed to remain there till the case against Shri Shukla is decided.

As regards the first question, the prosecution against Shri Shukla should be dropped for the same reasons as set forth in R.L.A's opinion No.G - 292, dated the 20th July 1951 for which the prosecution against M/s. Hillson & Dinshaw Ltd. has been dropped.

As regards the second question, the Court should be moved under section 517, Criminal Procedure Code to pass orders regarding the disposal of the sample firewood pieces and the sale proceeds of the muddamal which have been produced in Court in respect of this case.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No. G-481, dated the 8th October 1951.

S.I./16.7.56. 4c.

Office of the R.L.A.

The view taken by the Civil Supplies Department that the Civil Supplies Department, Notification No.455/IV-D is operative under the Bombay Essential Commodities and Cattle Control Act, 1946, is not correct (vide R.L.A's opinion No.G-249, dated the 2nd April 1949 which was given with reference to the same notification). There thus being no ban on the export of Firewood outside the State of Bombay, firewood can be legally be exported to Saurashtra fr from Ratanpur Mahal.

Id/-

Remembrancer of Legal Affairs.

U.R. to C.S.D., No.G-654, dated the 24th December 1951.

S.I./16.7.56. 4c.

Office of the R.L.A.

Please see u.o.r. from C.S.D. No.954/2056/ PCL-III/IV F, dated 16-6-51 on pre-page.

Miss M.S.M.Khan, Advocate, under his letter, his letter, dt.10-4-51 ante informed the Assistant Director of Civil Supplies that M/s. Sharda Badami Charcoal Factory had determined on 17-2-51 the partnership so far as Mr.Ganga Narayan was concerned u under clause 22 of the partnership deed dt. 19-3-1949 and that henceforth the partnership of the said Sharda Badami Charcoal Factory would be of (1) Shri Aziz Koili, (2) Shri Faizabadkhan Altafkhan and (3) Shri Mahboobali Mahomedalli, and she requested to renew the Producer's and Wholesaler's licences which had been standing in the name of the said factory, in the name of the said Factory with Mr. Aziz Koili as acting partner of the said firm. From the copies of the correspondence between Shri Ganga Narayan on the one hand and Shri Aziz, Shri Faizabad and Shri Mehboobalii on the other, through their respective advocates, it appears that there are disputes between the parties regarding accounts and profits of the business of the firm and that under their letter, dt. 17-2-51 the said Ganga Narayan's partnership in the firm has been determined by the said other three partners under clause 22 of the partnership deed on the ground that he(Ganga) had remained absent from the partnership business for more than 30 days without the consent of the said other partners.

As the licences stood in the names of Sharda Badami Coal Factory with Ganga Narayan as the proprietor, and the names of the said other three partners were not mentioned in column 5 of the application form and the money paid receipts for wholesaler's as well as for producer's licenses issued by the Civil Supplies Department were in the name of M/s. Sharda Badami Coal Factory-Proprietor Ganga Narayan, Civil Supplies Department under its letter, dt. 28-4-51 ante called upon Kumari M.S.M. Khan, to produce the dissolution deed of partnership agreement, to prove tgat her clients had become the exclusive owners of the business and to prove that ~~xxx~~ Shri Ganga had retired from the business. As there was no dissolution deed and the partnership was stated to have been determined so far as Shri Ganga Narayan was concerned under clause 22 of the Partnership deed, Miss Khan was requested under Civil Supplies Department letter, dt. 30-5-51 ante to produce an affidavit of the outgoing partner, Shri Ganga Narayan made before the Presidency Magistrate to show that he had retired from the said firm business and that he had no objection to her clients being recognized as the sole owners and proprietors of the Factory. Mis Khan in her letter, dt. 6-6-51 ante states that it is impossible to produce the affidavit of Shri Ganga owing to his relations with her clients having been strained and has produced the affidavit of Mehboobali Mahomedalli signed before the

Presidency Magistrate and has requested Government not to adress Shri Ganga as the proprietor of the Factory.

In the circumstances, Civil Supplies Department has referred the following questions for R.L.A's opinion:-

(1) Whether Govt. can recognize these three persons viz. Aziz Koili, Faizadkhan Altafkhan and Mehboobali Mohamedali, on the strength of the affidavit of Shri Mehboobali as the sole owners of the factory in question and allow them to run the factory on the strength of old licences of Sharda Badami Coal Factory.

(2) Whether ~~XXXXXXXXX~~ they can determine under clause 22 of the Partnership deed in question, the share of any partner without making any reference to the Court and

(3) Whether the existing three partners can have their claim over the deposit amount of Rs.1000/- paid against the wholesale licence and which stands in the name of M/s. Sharda Badami Coal Factory Proprietor Ganga Narayan. If not then a fresh deposit should be asked from the existing partners as the proprietor whose name has been included in the money paid receipt is no longer in the firm.

S.I./17756. 4c.

Office of the R.L.A.

In this case Government should recognise Ganga Narayan as the licensee in whose name the Municipal licence and the charcoal licence stands. He has now informed Government under his letter dated the 27th September 1951 that the other three persons whom he has taken as partners do not allow him to enter the factory and that they have no right to determine the partnership as they are quarrelling and fighting with him. He has also informed Government that he should not be held responsible for any breach of the rules. In view of this the licence should be continued in Ganga Narayan's name only and he should be informed that he would be personally liable for breach of the conditions of the licence or of the provisions of the Bombay Charcoal and Firewood Trade Licensing Order, 1949 unless he gets the licence cancelled. The other 3 need not be recognised for the purpose of that licence unless they establish their right in a court of Law.

Id/-

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-651, dated the 21st December 1951.

S.I./17/7/56/ 4c.

Office of the R.L.A.

It is not clear from the papers whether Shri Rahate the licensee has made a Will or died intestate and whether the shop is his self acquired property or ancestral property. If he has died intestate, then the daughters would be the legal heirs in the absence of a son, son's son, son's son's son, widow, predeceased son's widow, and predeceased son's predeceased son's widow. Among the daughters also the priority is as follows:-

(i) unmarried daughter

(ii) Married but unprovided for

(iii) Married and possessed of means.

No daughter of the 2nd class should inherit if a daughter of the 1st class is in existence and no daughter of the 3rd class should inherit while one of the 1st and 2nd class is in existence (pp.40-41 of Mulla's Hindu Law, 1946 edn.) If therefore Dhondibai is without means she would be the legal heir in preference to Saraswatibai if she possesses means. However if both belong to the same class, then they would take the estate jointly. The Rane brothers cannot claim to be heirs as daughter's sons come after the daughters in the order of succession according to the Mitakshara Law (p.42 ibid).

The Civil Supplies Department should make further exquiries in the matter with Dhondibai and Ranes before transferring the licences.

Id/-

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-646, dated the 19th December 1951

S.I./17.7.56. 4c.